UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/831,398	04/23/2004	Andreas S. Krebs	11884/502401	1042

53000 7590 10/18/2013

KENYON & KENYON LLP
1500 K STREET N.W.
WASHINGTON, DC 20005

EXAMINER	
GISHNOCK, NIKOLAI A	
ART UNIT	**PAPER NUMBER**
3715	

MAIL DATE	DELIVERY MODE
10/18/2013	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDREAS S. KREBS

Appeal 2011-008251
Application 10/831,398
Technology Center 3700

Before: JENNIFER D. BAHR, MICHAEL C. ASTORINO, and JOHN W. MORRISON, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Andreas S. Krebs (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-3, 7-11, 16, 17, 19-21, 33, 37-42, and 44-47 under 35 U.S.C. § 103(a) as being unpatentable over Nunes (GB 2 338 333 A, pub. Dec. 15, 1999) and Elzinga (US 2005/0026131 A1, pub. Feb. 3, 2005). We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

The Claimed Subject Matter

Claim 1, reproduced below, is illustrative of the claimed subject matter.

> 1. A computer-implemented method comprising: detecting, by a processor, a change in how a structure is organized, which change is input via interaction with elements displayed in one or more first sections of a user interface;
>
> responsive to the detection of the change, positioning, by the processor, representations of software components of the structure into a preview, including:
>
> determining which of a plurality of structure strategies has been selected,
>
> creating an initial state model for an object of the structure in accordance with the strategy determined to have been selected,
>
> requesting a next available option for the object in relation to the strategy, updating the state model for the object,
>
> determining no options are available for the object in relation to the strategy,
>
> determining that something within the object was not reached based on the state model, and
>
> providing an indication of an error responsive to the determining that something was not reached; and
>
> presenting the preview, by the processor and in a display device, in a second section of the user interface separate from the one or more first sections.

OPINION

Claims 1-3, 7-11, 16, 17, and 19-21

Claims 1 and 21 recite a method comprising, *inter alia*, detecting a change, input via interaction with elements displayed in one or more first sections of a user interface, in how a structure is organized; positioning software components of the structure into a preview responsive to the detection of the change; and presenting the preview in a second section of the user interface separate from the one or more first sections. Claim 17 recites a system comprising, *inter alia*, a processor configured to detect a change in a structure, via interaction with elements displayed in one or more first sections of a user interface; positioning representation of software components of the structure into a preview responsive to the detection of the change; and presenting the preview in a second section of the user interface separate from the one or more first sections.

The Examiner's findings with respect to Nunes are not entirely clear. Specifically, the Examiner does not coherently identify which features of claims 1, 17, and 21 are disclosed by Nunes, much less specifically point out where each of such features is disclosed in Nunes. Notably, the Examiner does not articulate any explicit findings with respect to whether Nunes discloses detecting a change in a structure (or how a structure is organized) input via interaction with elements displayed in one or more first sections of a user interface and presenting a preview, generated in response to detecting the change, of representations of software components of the structure in a second section of the user interface separate from the one or more first sections, as called for in claims 1, 17, and 21.

To address this combination of features the Examiner seemingly relies, at least in part, on the editing/previewing of a learning object depicted by Elzinga in figure 6. Ans. 5, 16. The Examiner determines it would have been obvious "to have merely detected the organization of the learning object of Nunes, as taught by Elzinga, in order to provide an updated and accurate picture of the learning object to a course designer during editing." *Id*. The Examiner adds that "viewing a preview of the course organization makes clear an understanding of the organization of the structure, as Elzinga's preview is responsive to editing changes." Ans. 16.

Appellant argues that the paths displayed in the adaptive path editing window of Elzinga's figure 6 are generated in response to user interaction with the graphical components displayed, not in response to detection of a change in a structure, as required in Appellant's claims 1, 17, and 21. App. Br. 6, 10. According to Appellant, the display in Elzinga's figure 6 is an aid for the user to set an organization, while the features of claims 1, 17, and 21 aid a user to understand the perhaps not previously appreciated effect of an organization set elsewhere by the user, "by generating a preview of how the structure would play out given the organization the user has set in a separate section." App. Br. 6. As pointed out by Appellant, claims 1, 17, and 21 call for the preview to be presented "in a display section separate from a section in which the change in structure organization is made." App. Br. 6-7, 10.

In addressing the requirement in claims 1, 17, and 21 that said preview be presented in a section of the user interface separate from the one or more first sections in which the change is input, the Examiner explains that "Elzinga's Figure 6 teaches each component in separate windows in the user interface; these are understood to be [A]ppellant's sections." Ans. 17.

Elzinga's figure 6 depicts a user interface including "selectable content variables, concepts, properties, and an adaptive path editing window." Para. [0114]. The user interacts with the adaptive path editing window (i.e., the window labeled "Vocabulary Test" in figure 6) to add icons, such as activities, and branches, to the adaptive path displayed in that window, or section, of the user interface. *See*, *e.g.*, paras. [0124], [0127], [0134], [0139]. For example, the user can drag and drop an activity from the activity list into the adaptive path editor at any point within the adaptive path (paras. [0134], [0139]) and can either click and drag from a diamond to another activity or just click on the diamond and then on an icon to make a connection (para. [0128]). In other words, a change to the adaptive path reflected in the adaptive path editing window (or section of the user interface) is input by interaction with elements displayed in the adaptive path editing window.

The Examiner does not explain with sufficient specificity how Nunes would be modified in view of the teachings of Elzinga nor specifically identify which portions of the display shown in Elzinga's figure 6, if any, would correspond to the one or more first sections of a user interface in which changes to the structure are input and to the second section in which the preview is presented in claims 1, 17, and 21. The Examiner's findings on page 6 of the Answer suggest that the Examiner considers the adaptive path editing window (i.e., the window labeled "Vocabulary Test" in figure 6) to be the section in which the preview is presented. *See* Ans. 6 (stating, "the preview map is displayed in a second window (Figure 6, 'Vocabulary Test' pane))." However, as we found above, the adaptive path editing window is the section of the user interface with which the user interacts to

change the adaptive path. As such, it is not apparent, and the Examiner does not adequately explain, how incorporating the editing concept of Elzinga into Nunes would yield a method or system satisfying the requirement in claims 1, 17, and 21 that the preview be presented in a second section of the user interface separate from the one or more first sections in which the change is input via interaction with elements in the one or more first sections.

The Examiner asserts that this limitation is non-functional descriptive material "because labeling the separate sections as a first or second section does not provide any weight to the claims apart from the sections being separate." Ans. 17. This assertion does not coherently explain how the proposed combination satisfies the claimed requirement that the preview be presented in a section of the user interface separate from the section in which the change is input.

For the above reasons, the Examiner fails to establish that the subject matter of claims 1, 17, and 21 would have been obvious. Thus, we do not sustain the rejection of claims 1, 17, and 21 and of their dependent claims 2, 3, 7-11, 16, 19, and 20 as unpatentable over Nunes and Elzinga.

Claims 33, 37-42, and 44-47

Claim 33 requires storage of a plurality of preset component output strategies, each including a respective set of rules and each being selectable by input of a reference to said respective component output strategy via interaction with the third section of the user interface window, and application by the machine of the stored set of rules of the selected output strategy for generating the map. Once again, the Examiner's findings with respect to Nunes are not entirely clear. However, the Examiner appears to

rely on paragraphs [0079]-[0081] and [0084]-[0086] of Elzinga for this feature. *See* Ans. 5, 19.

The Examiner determines that it would have been obvious to process "the object preview of Nunes in accordance with the learning strategies of Elzinga, in order to optimize learning for a particular individual, group, or educational lesson." Ans. 6.

Paragraph [0079] of Elzinga cited by the Examiner discloses that once designed, the educational lesson is experienced by the student/tutor/user, data relating to the user's learning is gathered and analyzed, and modifications are selectively or automatically made to the educational lesson to optimize the learning process. Paragraph [0080] discloses types of performance data analyzed, and paragraph [0081] discloses that the learner performance data is gathered and used to adjust pace and frequency of exposure to particular content. Paragraphs [0084]-[0086] disclose different types of adaptivity that could be employed to optimize the learning in embodiments of the invention.

In sum, the passages of Elzinga cited by the Examiner disclose modifying the pace and sequencing of learning activities to modify the educational lesson to optimize learning, and further describe different types of adaptivity for making such modifications. The Examiner's finding that these modifications or adaptivities are strategies is reasonable. *See* Ans. 19. However, these passages do not teach storing a plurality of such strategies so that each is selectable by input of a reference to said strategy via interaction with a section of the user interface window, as called for in claim 33, and the Examiner does not adequately explain how the combination of Elzinga's

learning strategies with Nunes would render obvious a method with such a feature.

Thus, the Examiner fails to establish that the subject matter of claim 33 would have been obvious. We therefore do not sustain the rejection of claim 33 and of its dependent claims 37-42, and 44-47 as unpatentable over Nunes and Elzinga.

DECISION

The Examiner's decision rejecting claims 1-3, 7-11, 16, 17, 19-21, 33, 37-42, and 44-47 is reversed.

REVERSED

hh